

THOMAS C. BAY
JOYCE R. BAY

IBLA 85-187 Decided June 13, 1985

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, declaring mining claims null and void. AA-29664, AA-29668, AA-29669, and AA-29673.

Affirmed.

1. Alaska: Land Grants and Selections -- Alaska: Statehood Act --
Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land
-- Withdrawals and Reservations: State Selections

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriation, including location under the mining law. A mining claim located on land segregated and closed to mineral entry is properly declared null and void ab initio.

APPEARANCES: Thomas C. Bay, for himself and Joyce R. Bay.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Thomas C. Bay and Joyce R. Bay have appealed from a November 14, 1984, decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), declaring the Gold Queen Nos. 18, 22, 23, and 27 placer mining claims null and void. AA-29664, AA-29668, AA-29669, and AA-29673. The location notice for the Gold Queen No. 18 claim states that it was located on December 2, 1973, and is situated in sec. 15, T. 29 N., R. 8 W., Seward Meridian. The location notices state that the Gold Queen Nos. 22, 23, and 27 placer mining claims were located on March 26, 1974, in sec. 21 of the same township. The BLM decision recited that the land subject to the claims had been selected on January 21, 1972, by the State of Alaska under application No. AA-6912. Although appellants were provided an opportunity to show that these claims were amended locations of claims which predated the state's selection application, they have failed to do so.

Appellants are also owners of four other claims, Gold Queen Nos. 1, 2, 7, and 8, conveyed to them by Earle Foster. All eight of these claims were apparently once part of a group of claims, the Gold Queen Nos. 1 through 32, located by Earle and Rhea Foster.

On September 26, 1979, copies of the location notices for the eight claims were filed with BLM to satisfy the requirements of 43 U.S.C. § 1744 (1982). The notices were accompanied by a copy of a document styled "Amended Certificate of Location" dated February 13, 1976, and signed by the Fosters. The document states that the Gold Queen Nos. 1 through 32 mining claims in sec. 22, T. 29 N., R. 8 W., Seward Meridian, are also known as the Inlet Mining Federal Claims for which the dates of the discovery were August 17-18, 1971, and for which the original location notices were posted on September 25, 1971, prior to the filing of the state's selection application.

By notice filed May 18, 1984, BLM informed appellants that additional information was required in support of their contention that the claims relate back to a date when the lands were open to location. The notice stated:

There is presently no showing in the records that the claimants are successors to an unbroken chain of title to the claims. There is no documentation verifying the transfer of interest from the original locators Inlet Mining to Mr. Earle C. Foster and Mrs. Rhea J. Foster.

After having been granted repeated extensions of time, appellants submitted information to BLM. The evidence submitted by appellants satisfied BLM that the four claims located in sec. 22 antedated the filing of the state's selection application. This was not true, however, for the four claims in secs. 15 and 21. The record contains no evidence of a prior location of claims located in either sec. 15 or sec. 21, or subsequent conveyance to the Fosters. The 1976 amended certificate of location filed by the Fosters refers to claims in sec. 22, but makes no mention of claims in secs. 15 or 21. Because there was no evidence of a prior location of claims in secs. 15 and 21, BLM issued its November 14, 1984, decision declaring the four mining claims null and void. The land had been segregated at the time the claims were located.

[1] Appellants contend that BLM's decision "discriminates, violates our 'Constitutional Rights,' and is plainly an 'Abuse of Process.'" It is well established, however, that under Departmental regulations 43 CFR 2091.6-4 and 2627.4(b), a filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including appropriation under the mining law. Fred Thompson, 74 IBLA 231 (1983); W. Ted Hackett, 39 IBLA 28 (1979). A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio. Ronald R. Kotowski, 82 IBLA 317 (1984). The issuance of the decision by BLM did not violate appellants' constitutional rights. See Mackay Bar Corp., 69 IBLA 148 (1982); Dorothy Smith, 44 IBLA 25, 29 (1979); see generally United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

